

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

WP(C).No. 30469 of 2006(B)

PETITIONERS:

1. SHAJI,
PANAYAM HOUSE, NEAR AMMANKOIL, VADAKKUMKARA MURI,
NEDUMANGAD VILLAGE.
2. ABDUL VAHEED,
ANEEZ MANZIL, VALAMKUZHI, VEMBU,
ANAD MURI, ANAD VILLAGE.

BY ADV. SRI.L.MOHANAN

RESPONDENTS:

1. AHAMED UMMAL BEEVIKUNJU,
KURAKKODE PUTHEN VEEDU, THEKKUMKARA MURI,
NEDUMANGAD VILLAGE.
2. DAISY LAZARUS RATNA BAI,
MURUVATHUKKAL PUTHEN VEEDU, MYLAMOODU,
ARUVIKKARA VILLAGE.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

W.P.(C)NO.30469 OF 2006

DATED THIS THE 29th DAY OF NOVEMBER, 2006

JUDGMENT

Petitioners are the purchasers of the property covered by the decree in O.S.207/89 pendente-lite. They are challenging Ext.P1 order passed by Munsiff dismissing their application for condoning the delay and restoration application filed to restore the suit. Ext.P2 order passed in C.M.A. 9/05 filed by petitioner challenging Ext.P1 order. The case of petitioners is that there is sufficient reason to condone the delay and therefore Court should have allowed the application.

2. Learned Munsiff as well as learned Sub Judge has considered facts and evidence in detail. The suit was stayed under Section 10 of C.P.C. till disposal of A.S.95/98 from 1991 onwards. Plaintiffs were directed to file an affidavit if A.S.95/98 was pending. Plaintiffs did not file an affidavit. They remained absent also. Consequently the suit was dismissed for default. The application for restoration of the suit was filed after a delay of 845 days. Court found that even according to petitioners, A.S.95/98 was dismissed on 24.9.04 and even if it is taken that they came to know about the dismissal of the suit only thereafter, the restoration application was filed seventeen days thereafter and there is no explanation for the delay. I

find no infirmity in Ext.P1 or Ext.P2 orders warranting interference in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India. Petition is dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

Acd